

Applicant: Jaime Romero
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Remarks

This Amendment is in response to the Office Action mailed March 23, 2007. The current Office Action indicates that Claims 23-25 are currently pending, and Claims 1-22, and 26-69 are withdrawn from consideration.

Applicant respectfully points out that the previous response filed on December 27, 2006 whereby the claims of Group II were elected in response to a Restriction Requirement, further have dependant claims which were never withdrawn or cancelled. As such, Applicant believes Claims 23-25, 27-29, 31-45, 47, 51, and 68-69 all of which ultimately depend on Claim 23, which was an elected claim, are pending in the subject Application. Applicant respectfully requests these claims be entered, and be identified as pending in the subject Application. Claims 1-22, 26, 30, 46, 49-50, and 52-67 have been withdrawn, and Claim 48 has been cancelled.

Claim 23 has been rejected under 35 U.S.C. § 112, first paragraph, a failing to comply with the Written Description requirement.

Specifically, the Office Action has objected to recitation of "an effective amount" of a nutritional supplement. Applicant has amended Claim 23 to remove the recitation of "effective amount." Applicant believes the currently amended Claim 23

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overcomes the rejection under 35 U.S.C. § 112, and respectfully requests reconsideration and withdrawal of this rejection.

Claims 23-25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Skinner (U.S. Patent No. 6,210,710). Applicant respectfully traverses this rejection based on newly revised Claim 23, which not only provides formulation percentages, but requires a specific in vitro release profile. There is no teaching or suggestion found in the Skinner reference for the release profile as currently claimed in the subject application.

Furthermore, under the recent *KSR v. Teleflex* Supreme Court decision the reason for modification must be made explicit or obviousness and may be supported by "common sense". There is nothing explicit in the Skinner reference other than a generalized disclosure of a sustained release formulation. Skinner provides no disclosure as to the release profile of the disclosed formulations. This is in contradistinction to the subject Application, which sets forth a specific desired release profile that is neither explicitly taught in the Skinner reference, nor would be arrived at under the KSR "commons sense" obviousness evaluation. Because there is no teaching or suggestion found in the prior art a rejection under 35 U.S.C. § 103(a) cannot be properly applied.

Applicant respectfully requests reconsideration and withdrawal of the current objection. Based on the Amendments

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presented herein, Applicant respectfully asserts the application is now in condition for allowance. If the Examiner believes there are any additional issues that have not been resolved, the Examiner is invited to call the undersigned representative who is attorney of record in this case.

No new matter is added by these amendments.

The Commissioner is hereby authorized to charge our Deposit Account No. 190734, should additional fee(s) be required, or credit any overpayment, in the filing of this document to expedite the prosecution of this application.

Respectfully submitted,

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